Equality of Opportunity and Freedom from Discrimination

MHR Connections

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THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

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Manitoba celebrates Black History Month

Gospel singers twin sisters Rhonda and Nadia Thompson from the Truth and Life Worship Centre choir perform during Black History Month.

Manitoba Educators, students, parents and the general public are taking part in many events during February celebrating Black History Month. Events include a gospel concert, a cultural awareness workshop, a presentation by students of St. John's School and Beam Caribbean Community Cultural Centre on the "Journey through the Underground Railway", a community awards banquet and a social in the memory of Wade Kojo Williams.

According to the latest Census figures, more than 15,600 people in Manitoba self-identified as being black and over 7,600 people of African descent live in Manitoba.

Canada Post honours Black History Month with 2013 Stamps

February is Black History Month—a time to celebrate part of Canada's vibrant and rich tapestry of culture and nationalities. Canada Post's Black History series honours the achievements and passions of black Canadians. The 2013 issue is the 5th instalment in the Black History series features lifeguard Joe Fortes and jazz musician Oliver Jones

Family Status Workshop planned

In response to the resurgence of awareness and the number of inquiries regarding accommodating family status in the workplace, the Commission will be offering a two hour workshop for employers, supervisors and human resource specialists this spring in Winnipeg. Please call 204-945-3009 if you are interested in participating.

The Rights Connection
by Yvonne Peters - Vice Chairperson

A recent human rights decision reinforcing that employers are obliged to accommodate reasonable childcare requests is not the huge change in the employment landscape that many pundits and media coverage would have you believe. In fact it really doesn't change much when it comes to dealing with family matters in the workplace.

The case is that of Fiona Johnstone, who worked irregular shifts for the Canada Border Service Agency (CBSA), and asked for "static" shifts that would allow her to plan child care arrangements. Her request was denied and she took her complaint of discrimination based on family status to the Canadian Human Rights Tribunal, which decided in her favour. The CSBA appealed but lost again in a federal court.

Media coverage was strange to say the least, with interviews concerning day care spaces, changing the employment landscape and whether or not having children was a lifestyle choice. No mention that unreasonable discrimination based on marital or family status has been a protected ground from discrimination in Manitoba since 1976.

The Manitoba Human Rights Commission has been dealing with complaints of discrimination on the basis of family status in the workplace since that time. Employers are expected to consider requests for accommodation where the employee can demonstrate a special need based on their parental or family obligation.

Family status protection does not mean that the obligations of the employer are endless. The test is always "reasonableness". Employees cannot expect their employers to "just figure out" an accommodation plan. The employee must take an active part. Also if an employer has actual proof (and not just assumptions) of undue hardship such as financial or specific requirements for the operation of the company, accommodation may not be possible.

However, by making what are often small changes to the workplace such as allowing a leave of absence, flexible work hours or permitting an employee to refuse overtime, accommodating an employee can often take place without undue hardship to the employer and little or no disruption in the workplace.

Recent Decisions

K.K. v. G.S. o/a Hair Passion (2013) (Adjudication)

A woman (the complainant) filed a complaint against her former employer (the respondent) under section 14 of *The Human Rights Code* alleging discrimination in her employment on the basis of her disability (bi-polar depression) and by failing to accommodate her special needs based on her disability and terminating her employment.

The Adjudicator found that the complainant's disability impacted her performance sufficiently to conclude that it was an indirect or motivating factor in the respondent's decision to terminate her employment. The Adjudicator found that the respondent satisfied the procedural and substantive requirement to accommodate the complainant's disability during the course of her employment, but failed to show that it was justified in terminating the complainant's employment.

The complainant was awarded $2000 in general damages for injury to her dignity, self respect and feelings.

The Adjudicator granted the Commission's request to identify the complainant by her initials only given the sensitive nature of the information disclosed at the hearing.

Kilbride v A+ Financial Services Ltd. (2012) (Interim Decision)

This hearing was scheduled for December 11, 2012 but the Respondent (the employer) was unable to attend and requested an adjournment.

The adjudicator noted that there were two competing principles to be considered before granting an adjournment. Subsection 39(1) of *The Human Rights Code* requires that an adjudicator convene and complete the hearing without undue delay. On the other hand, subsection 39(4) requires that the adjudicator give every party attending the hearing a full opportunity to present evidence and make submissions.

In this case, the adjudicator concluded that the prejudice to the Respondent in requiring the hearing to proceed at a time when the owner was clearly unable to participate due to mental health issues outweighed any prejudice to the Complainant from adjournment. He therefore ordered that the hearing be adjourned to March 11 12, 13, 14 and 15, 2013 to at a time and place to be determined.

Please join the Honourable Jennifer Howard
Minister responsible for the Status of Women
To commemorate
International Women's Day
Friday, March 8, 2013
Rotunda, Manitoba Legislative Building
11:45 a.m. – 1:00 p.m.
A light luncheon will be provided.
Please RSVP by March 4, 2013
204-945-6281, toll-free 1-800-263-0234

Commission adds policy on social disadvantage to website

Amendments to *The Human Rights Code (The Code)* took effect on June 14, 2012. These amendments included the addition of "social disadvantage" as a protected ground or protected characteristics as referred to in *The Code*.

When first announced, the Manitoba Government explained that adding disadvantaged social status protects individuals who are undereducated, underemployed, homeless or living in inadequate housing from unreasonable discrimination.

To help navigate the tricky road of understanding social disadvantage protections, the Commission has developed a policy and is currently working on public guidelines. The policy can be found on the Commission's website under legislation and policies. It is Policy L–25.

It is important to note that a person filing a complaint under this ground also has the burden of proof to establish that they experience diminished social standing or regard and that the discrimination is based on a negative bias or stereotype related to their circumstances.

The policy lists a few examples. One is in the area of housing. The possible scenario for a complaint would be the imposition of different rental terms, financial or otherwise, on underemployed or undereducated individuals or on people who were believed to be living in, or coming from, inadequate housing.

An example of a possible complaint in employment is requiring a grade 12 education regardless of whether the job requirements need that level of education.

And finally one could consider filing a complaint in the area of services if a company refused to make a delivery (like a newspaper) to a low income area.

The guidelines will be available in the spring of 2013.

Circle of Courage reaches out to Aboriginal Youth

Dr. Martin Brokenleg of Sioux Falls Lakota Nation spoke to more than 300 participants in Winnipeg, on World Social Justice Day (February 20) about reaching out to First Nations youth. Students, service providers, federal and provincial workers heard about a technique he developed called "The Circle of Courage." The technique is steeped in Aboriginal traditions and Dr. Brokenleg offered many insights into working with First Nations youth using positive and holistic strategies.